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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 TIMOTHY SOLOMON,

12 Petitioner,

13 v.

14 UNITED STATES DISTRICT COURT,

15 Respondent.
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Case No. 2:21-cv-00718-JDP (HC)

ORDER GRANTING PETITIONER'S
APPLICATION TO PROCEED IN FORMA
PAUPERIS

ECF No. 4

ORDER FINDING THAT THE PETITION
DOES NOT STATE A COGNIZABLE
FEDERAL CLAIM AND GIVING LEAVE TO
AMEND WITHIN SIXTY DAYS

ECF No. 1

19 Petitioner is a state prisoner seeking a writ of habeas corpus under 28 U.S.C. § 2254. ECF
20 No. 1. The petition is before me for preliminary review under Rule 4 of the Rules Governing
21 Section 2254 Cases. Under this rule, the assigned judge must examine the habeas petition and
22 order a response unless it “plainly appears” that the petitioner is not entitled to relief. *See Valdez*
23 *v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019); *Boyd v. Thompson*, 147 F.3d 1124, 1127 (9th
24 Cir. 1998). Here, it plainly appears that petitioner is not entitled to relief. I will give petitioner an
25 opportunity to amend before recommending that the petition be dismissed. I will also grant his
26 application to proceed *in forma pauperis*. ECF No. 4.

27 Petitioner argues that he is entitled to sentencing relief under California Senate Bill No.
28 136. ECF No. 1 at 3, 7. This claim is not cognizable for at least two reasons. First, the

1 application of state sentencing law generally does not present a federal question. *Lewis v. Jeffers*,
2 497 U.S. 764, 780 (1990). Such a claim is only cognizable where the state law sentencing error
3 was “so arbitrary or capricious as to constitute an independent due process” violation. *Richmond*
4 *v. Lewis*, 506 U.S. 40 (1992). Petitioner has not alleged facts showing that California’s refusal to
5 extend him the benefits of SB 136 meets that high standard.

6 Second, petitioner admits that he has not exhausted his claim by presenting it to the
7 California Supreme Court. ECF No. 1 at 5; *McQuown v. McCartney*, 795 F.2d 807, 809 (9th Cir.
8 1986). Exhaustion is required unless petitioner can show that no state remedies remain available
9 to him. *Id.* Given that petitioner’s claim centers on the application of state sentencing law, it
10 appears that the California Supreme Court could offer him relief.

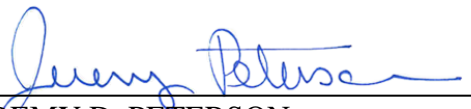
11 I will give petitioner an opportunity to amend his petition and to explain why his claim
12 should proceed.

13 It is ORDERED that:

- 14 1. Petitioner’s application to proceed in forma pauperis, ECF No. 4, is granted.
- 15 2. Petitioner may file an amended petition within sixty days of this order’s entry. If
16 he does not, I will recommend that the current petition be dismissed for the reasons stated in this
17 order.
- 18 3. The Clerk of Court is directed to send petitioner a federal habeas form.

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20 IT IS SO ORDERED.

21 Dated: June 22, 2021

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23 JEREMY D. PETERSON
24 UNITED STATES MAGISTRATE JUDGE
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